

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS BUDD, LAWRENCE		DEFENDANTS CITY OF PHILADELPHIA			
(b) County of Residence of First Listed Plaintiff <u>Clearfield</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>Philadelphia</u> (IN U.S. PLAINTIFF CASES ONLY)			
(c) Attorney's (Firm Name, Address, and Telephone Number) LAW OFFICES OF PATRICK G. GECKLE, LLC, 1500 J.F.K. Blvd., Ste. 1850, Phila. PA 19102 - 215-735-3326		Attorneys (If Known)			
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State <input type="checkbox"/> PTF <input type="checkbox"/> DEF		
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> PTF <input type="checkbox"/> DEF		
		Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input type="checkbox"/> DEF	Foreign Nation <input type="checkbox"/> PTF <input type="checkbox"/> DEF		
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY <input type="checkbox"/> 310 Airplane	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 875 Freedom of Information Act		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice		
	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 950 Constitutionality of State Statutes		
V. ORIGIN (Place an "X" in One Box Only)		Appeal to District Judge from Magistrate Judgment			
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §1983					
Brief description of cause: Plaintiff was denied his constitutional and statutory rights.					
VI. CAUSE OF ACTION		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMAND \$ 200,000.00	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
VII. REQUESTED IN COMPLAINT:					
VIII. RELATED CASE(S) IF ANY		(See instructions):		JUDGE	DOCKET NUMBER
DATE	SIGNATURE OF ATTORNEY OF RECORD				
6/13/2013					
FOR OFFICE USE ONLY					
PATRICK G. GECKLE, ESQUIRE					
RECEIPT #	AMOUNT	APPLYING IFFP	JUDGE	MAG. JUDGE	

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.Address of Plaintiff: P.O. Box 1000, Houtzdale, PA 16698-1000Address of Defendant: 1515 Arch Street, 14th Floor, One Parkway Bldg., Philadelphia, PA 19102-1595Place of Accident, Incident or Transaction 2000 block of North 8th Street, Philadelphia, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No **RELATED CASE, IF ANY:**

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)**A. Federal Question Cases:**

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Patrick G. Geckle, Esquire, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; Relief other than monetary damages is soughtDATE: 6/13/2013

Attorney-at-Law

26718

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/13/2013

Attorney-at-Law

26718

Attorney I.D.#

CIV. 609 (6/08)

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

LAWRENCE BUDD : CIVIL ACTION

:
:

v

:
:

CITY OF PHILADELPHIA, et al. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

6/13/2013

Date

Patrick G. Geckle

Attorney-at-law

Lawrence Budd

Attorney for Plaintiff

215-735-3326

Telephone

215-567-1998

FAX Number

pgeckle@pgglaw.com

E-Mail Address

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE BUDD	:	
Inmate Number HT-0220	:	
SCI-Houtzdale	:	
P.O. Box 1000	:	
Houtzdale, PA 16698-1000	:	
vs.	:	
CITY OF PHILADELPHIA	:	Civil Action No.
c/o City of Philadelphia Law Department	:	
Claims Unit, One Parkway Building	:	
1515 Arch Street, 14th Floor	:	
Philadelphia, PA 19102-1595	:	
and	:	JURY TRIAL DEMANDED
POLICE OFFICER RICHARD P. NICOLETTI	:	
BADGE NUMBER 3798	:	
Individually and as a police officer	:	
for the City of Philadelphia	:	
c/o City of Philadelphia Law Department	:	
Claims Unit, One Parkway Building	:	
1515 Arch Street, 14th Floor	:	
Philadelphia, PA 19102-1595	:	
and	:	
POLICE OFFICER MARKOWSKI	:	
BADGE NUMBER 6917	:	
Individually and as a police officer	:	
for the City of Philadelphia	:	
c/o City of Philadelphia Law Department	:	
Claims Unit, One Parkway Building	:	
1515 Arch Street, 14th Floor	:	
Philadelphia, PA 19102-1595	:	
and	:	
POLICE OFFICER JOHN DOE NUMBER 1	:	
BADGE NUMBER	:	
Individually and as a police officer	:	
for the City of Philadelphia	:	
c/o City of Philadelphia Law Department	:	
Claims Unit, One Parkway Building	:	
1515 Arch Street, 14th Floor	:	
Philadelphia, PA 19102-1595	:	Attorney ID # 26718

COMPLAINT

Jurisdiction

1. This action is brought pursuant to 42 U.S.C. §1983.

Jurisdiction is based upon 28 U.S.C. §§1331 and 1343 (1), (3), (4) and the aforementioned statutory provision. Plaintiff further invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. §1337(a) to hear and adjudicate state law claims.

Parties

2. Plaintiff, Lawrence Budd, is a resident of the Commonwealth of Pennsylvania, and at all times relevant to this action was present in Philadelphia, Pennsylvania.

3. Defendant, City of Philadelphia, is a municipality of the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Philadelphia Police Department which employs Defendants, Nicoletti and Markowski.

4. Defendant, Richard P. Nicoletti, Badge Number 3798, is a police officer for the Philadelphia Police Department acting under color of state law. He is being sued in his individual and official capacity.

5. Defendant, Markowski, Badge Number 6917, is a police officer for the Philadelphia Police Department acting under color of state law. He is being sued in his individual and official capacity.

6. Defendant, John Doe #1, is and was at all times a police

officer for the City of Philadelphia, and acting under color of state law and within the scope and course of his employment. He is being sued in his individual and official capacity.

7. At all relevant times, all Defendants were acting in concert and conspiracy and their actions deprived Plaintiff Lawrence Budd of his constitutional and statutory rights as hereinafter described.

Factual Allegations

8. On or about June 16, 2011 at approximately 8:00 p.m. Plaintiff Lawrence Budd was walking in the 2000 block of North 8th Street in the City of Philadelphia.

9. As he was walking down the street suddenly an unmarked Philadelphia police car pulled up along side of him, Defendant Police Officer Nicolette and/or Defendant Police Officers Markowski and/or John Doe 1 exited the unmarked police car, drew their service weapons and pointed them directly at Plaintiff's head and then said to him "Don't f_ _ _ ing move or we'll f _ _ _ ing blow your brains out."

10. At the time Plaintiff Lawrence Budd was approached by the Defendant police officers, he was unarmed, not acting in anyway which could be considered aggressive nor was he acting in anyway which could be perceived to be a threat to the Defendant police officers or to anyone else.

11. Plaintiff Budd was then approached by the Defendant

police officers and either Defendant Officer Nicoletti or Defendant Officer Markowski or Defendant Officer John Doe 1 approached him and struck Plaintiff in the face with his walkie talkie knocking him to the ground.

12. After Plaintiff had been knocked to the ground, either Defendant Police Officer Nicholetti and/or Police Officer Markowski and/or John Doe 1 then began to punch and kick Plaintiff while he was on the ground.

13. After being struck in the nose with the walkie talkie and punched and kicked, Plaintiff temporarily lost consciousness. The next thing he recalls is being handcuffed and thrown onto the hood of the police car.

14. As a result of the conduct of the Defendant officers, Plaintiff showed obvious signs of injury and therefore was transported to Episcopal Hospital where he was x-rayed and diagnosed with a fractured nose, trauma to the head, closed head injury, and abrasions to face and head.

15. In addition, Plaintiff also suffered a fractured tooth which, due to the extent of the injury, eventually had to be extracted.

16. At no time during Plaintiff's encounter with any of the Defendant police officers did he act in an aggressive manner, resist arrest or do anything which could be considered to be threatening to any of the Defendant police officers or anyone

else.

17. The vicious and malicious beating of the Plaintiff by Defendant Police Officer Nicoletti and/or Defendant Police Officer Markowski and/or Defendant Police Officer John Doe 1 was without justification and was in violation of Plaintiff's rights under the Pennsylvania Constitution and the United States Constitution.

18. As a direct and proximate result of the actions of Defendants, Plaintiff Lawrence Budd suffered and continues to suffer physical and psychological harm, pain and suffering, some or all of which may be permanent as well a financial losses.

19. The use of unreasonable and excessive force is part of Defendants' pattern, practice and custom of subjecting citizens such as Plaintiff Lawrence Budd to unreasonable and excessive force.

20. Defendant Police Officer Nicolette and/or Defendant Police Officer Markowski and/or Defendant Police Officer John Doe 1 acted willfully, deliberately, maliciously or with reckless disregard of Plaintiff Lawrence Budd's constitutional and statutory rights.

21. Defendants engaged in the aforesaid conduct for the purpose of violating Lawrence Budd's constitutional rights by subjecting him to unreasonable and excessive force.

**FIRST CAUSE OF ACTION
FEDERAL CIVIL RIGHTS VIOLATIONS**

22. Plaintiff Lawrence Budd incorporates by reference paragraphs 1 through 21 of the instant Complaint.

23. As a direct and proximate result of all Defendants' conduct, committed under color of state law, Plaintiff Lawrence Budd was deprived of his right to be free from unreasonable and excessive force, to be secure in his person and property and to due process of law. As a result, Plaintiff Lawrence Budd suffered and continues to suffer harm in violation of his rights under the laws and Constitution of the United States, in particular, the First, Fourth and Fourteenth Amendments thereof, and 42 U.S.C. §1983.

24. As a direct and proximate result of the acts of all Defendants, Plaintiff Lawrence Budd sustained physical injuries, emotional harm, loss of liberty and financial losses, all to his detriment and harm.

25. Defendant City of Philadelphia has encouraged, tolerated, ratified and has been deliberately indifferent to the following patterns, practices and customs and to the need for more or different training, supervision, investigation or discipline in the areas of:

- a. The use of unreasonable force and excessive force by police officers;

- b. The proper exercise of police powers, including but not limited to the unreasonable use of force, the excessive use of force, and violations of citizens' free speech rights, particularly in connection with perceived challenges to police authority;
 - c. The monitoring of officers whom it knew or should have known were suffering from emotional and/or psychological problems that impaired their ability to function as officers;
 - d. The failure to identify and take remedial or disciplinary action against police officers who were the subject of prior civilian or internal complaints of misconduct;
 - e. Police officers' use of their status as police officers to employ the use of excessive force, or to achieve ends not reasonably related to their police duties; and
 - f. The failure of police officers to follow established policies, procedures, directives and instructions regarding the use of force under such circumstances as presented herein.
26. The City of Philadelphia failed to properly sanction or

discipline officers, who are aware of and conceal and/or aid and abet violations of constitutional rights of citizens by other Philadelphia police officers, thereby causing and encouraging Philadelphia police, including the Defendant officers in this case, to violate the rights of citizens such as Plaintiff, Lawrence Budd.

27. Defendants have by the above described actions deprived Plaintiff Lawrence Budd of rights secured by the First, Fourth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. §1983.

**SECOND CAUSE OF ACTION
SUPPLEMENTAL STATE CLAIMS**

28. Plaintiff Lawrence Budd incorporates by reference paragraphs 1 through 27 of the instant Complaint.

29. The acts and conduct of the Defendants in this cause of action constitute assault, battery, intentional infliction of emotional distress under the laws of the Commonwealth of Pennsylvania, and this Court has supplemental jurisdiction to hear and adjudicate this claims.

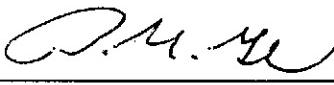
WHEREFORE, Plaintiff Lawrence Budd requests the following relief:

- a. Compensatory damages;
- b. Punitive damages;
- c. Reasonable attorney's fees and costs;

- d. Such other and further relief as appears reasonable and just; and
- e. A jury trial as to each Defendant and as to each count.

PATRICK G. GECKLE, LLC

By:



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